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C O N F I D E N T I A L SECTION 01 OF 02 TEL AVIV 006006

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SUBJECT: ISRAEL MOVES AHEAD WITH PATENT TERM EXTENSION

LEGISLATION

Classified By: Ambassador Richard Jones for reasons 1.4 (b) and (d)

¶11. (C) Summary. The proposed Patent Term Extension (PTE) Revision which passed an initial reading in the Knesset in July 2005, could become law as early as November 2005 and is almost certainly assured a quick approval. Debate is expected to resume in the Knesset Judicial Committee on October 14. Post has repeatedly expressed reservations about the legislation to the Ministry of Industry, Trade, and Labor (MOITL), Ministry of Justice (MOJ) and Ministry of Finance (MOF). These efforts have not proven successful in dissuading the GOI from moving the legislation forward. We recommend the USG actively seek to prevent the legislation from being enacted. End Summary.

ISRAEL TO MOVE AHEAD WITH PTE LEGISLATION

¶12. (C) During the negotiations on data exclusivity legislation in March 2005, the GOI told USTR that it would not move forward on PTE legislation, pending consultations with the USG on the issue. In a follow-up meeting on August 11, Ronit Kan, Director of the Foreign Trade Administration at MOITL told EconCouns that Minister Olmert was interested in revising the patent term extension draft legislation because of its possible impact on trade. Kan said that Olmert would ask the Minister of Justice, Tzipi Livni, to suspend Knesset consideration of the legislation and form an interministerial commission to study the legislation and its impact on international trade. In a recent surprising turn-about, during a September 28 meeting, Yair Shiran, MOITL Director of Multilateral Affairs, told EconOff that the GOI planned to move forward as quickly as possible with the legislation when the Knesset next meets at the beginning of November. A Knesset committee debate is scheduled for October 14. (Note: Debate in committee can occur even when the full Knesset is not in session. End note.)

THE REASON FOR THE LEGISLATION

¶13. (C) The Patent Term Extension legislation was first proposed in September 2004. The origin of the legislation appears to be a trade-off to local generic pharmaceutical manufacturing interests in return for the limited marketing exclusivity legislation that was adopted in March 2005. (Note: The marketing exclusivity legislation was opposed by local generic manufacturers because it impeded their ability to rely on confidential test data submitted by research-based companies for production of generics for the Israeli market. The limited marketing exclusivity law still allows generics to rely on the test data for export purposes. End Note.) The official explanation for the legislation offered by Ministry of Justice chief drafter Howard Poliner, is that it is intended to "clarify the existing patent term extension law." The need for such a clarification was created after Deputy Patent Commissioner wrote an opinion in July 2004 that would allow companies to seek the longest term of patent extension offered in the rest of the world, and not limit the Patent Office to providing only the shortest term of protection. Poliner explained to EconOff that he had drafted the law to reduce the "commercial uncertainty in the market" resulting from this opinion.

UPDATE ON THE LEGISLATION

¶14. (C) Changes to the original government decision of September 2004 have made the legislation more draconian. The changes include:

-The law appears to require (based on local industry analysis) that a company submit and receive PTE in another country before even applying for an extension in Israel;
-Once PTE is granted in Israel companies are required to notify the GOI if they receive PTE in any other country within 60 days;

The current draft of the legislation removes the discretion of the Israeli Patent Examiner to receive an application more than 90 days after marketing exclusivity has been granted to a product (and ignores the complications that pre-grant

opposition in Israel can cause for patent holders). The main objective of the legislation has not changed: to ensure that Israel provides patent term extension coverage for innovative pharmaceutical companies at the lowest possible level offered in the rest of the world.

REQUEST FOR WASHINGTON ACTION

15. Action request: Embassy Tel Aviv recommends the Department in conjunction with USTR consider engaging in immediate consultations with the GOI to delay passage of the PTE legislation. Septel reports results of Ambassador's October 6 discussion of this issue with PM Office Director General Ilan Cohen.

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JONES